MMC POWER SDN BHD & ANOR

v.

ABDUL FATTAH MOGAWAN & ANOR

COURT OF APPEAL, KUALA LUMPUR
NH CHAN JCA
ABU MANSOR ALI JCA
HAIDAR MOHD NOOR JCA
[CIVIL APPEAL NO: W-02-174-98]
3 NOVEMBER 2000

AGENCY: *Authority of agent - Ostensible authority - Limitation of agent's powers not communicated to contractor - Whether principal may now claim that agent's powers were limited - Termination of agent's services announced in newspaper by principal - Whether suggests that agent was authorised to transact on behalf of principal prior to termination*

The first defendant requested the plaintiffs to supply 490 Filipino workers to the defendants for certain projects. The defendants agreed to provide air tickets for each worker selected by the plaintiffs and agreed to by the defendants. The plaintiffs proceeded to advertise for workers and one Muhamad Ali of the defendants flew to the Philippines to commence the recruitment exercise. Muhamad Ali brought with him a power of attorney and a job order and handed the same over to the first plaintiff. Some 121 workers were recruited and applications for work permits were made. The plaintiffs obtained the relevant medical clearance, exit permits and visa applications. The said workers then resigned from their respective employment to prepare themselves for their departure to Malaysia. However, air tickets for the said workers were not sent to the plaintiffs and this, the plaintiffs contended, resulted in them suffering heavy losses. The defendants' defence was essentially that Muhamad Ali had acted outside the scope of his employment and without the defendants' knowledge. It was in evidence that the defendants had, subsequent to the said events, placed an announcement in the newspapers regarding the cessation of the employment of Muhamad Ali. The trial judge found for the plaintiffs and the defendants appealed.

Held:
Per Haidar Mohd Noor JCA

[1] The first defence witness testified that Muhamad Ali had the power to source but not to make the final decision on recruitment of labour. Hence, it was apparent that he had the authority to "source" for labour. However, any limitations on his powers had never been conveyed to the plaintiffs.

[2] The conduct of the defendants in placing an announcement in the newspapers regarding the cessation of the employment of Muhamad Ali clearly suggested that Muhamad Ali was, prior to the termination of his services, authorised to transact business dealings on behalf of both defendants.

[Appeal dismissed with costs.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Defendan pertama meminta plaintif membekalkan 400 pekerja Filipino kepada defendan untuk projek tertentu. Defendan bersetuju untuk memberikan tiket penerbangan untuk setiap pekerja yang dipilih oleh plaintif-plaintif dan disetujui oleh defendan-defendan. Plaintif telah mengeluarkan iklan untuk mendapatkan pekerja-pekerja dan seorang bernama Muhammad Ali yang berkhidmat dengan defendan telah terbang ke Filipina untuk memulakan pengambilan pekerja. Muhammad Ali telah membawa bersamanya satu surat kuasa wakil dan pesanan kerja dan menyerahkannya kepada plaintif pertama. Lebih kurang 121 pekerja telah diambil dan permohonan-permohonan untuk permit kerja telah dibuat. Plaintif-plaintif telah mendapatkan kelulusan perubatan yang relevan permit keluar dan permohonan-permohonan visa. Pekerja-pekerja tersebut kemudian meletakkan jawatan daripada majikan mereka masing-masing bagi menyediakan diri untuk berangkat ke Malaysia. Walaubagaimanapun, tiket-tiket penerbangan tidak dikirimkan kepada plaintif-plaintif dan ini, ditegaskan oleh plaintif-plaintif, menyebabkan mereka mengalami kerugian yang banyak. Pembelaan defendan-defendan adalah secara pentingnya tertumpu pada alasan bahawa Muhammad Ali telah bertindak di luar bidangkuasa pekerjaan beliau dan tanpa pengetahuan defendan-defendan. Ianya terbukti bahawa defendan-defendan telah, berikutan dengan peristiwa tersebut, membuat satu pengumuman dalam surat-surat khabar berhubung pemberhentian Muhammad Ali daripada pekerjaannya. Hakim perbicaraan telah membuat keputusan yang memihak kepada plaintif-plaintif dan ini merupakan rayuan defendan-defendan.

Diputuskan:
Oleh Haidar Mohd Noor HMR

[1] Saksi pembelaan yang pertama memberi keterangan bahawa Muhammad Ali mempunyai kuasa untuk mencari sumber tetapi tidak berkuasa untuk membuat keputusan mengenai pengambilan pekerja. Oleh itu, ianya jelas bahawa beliau mempunyai kuasa untuk "mencari" pekerja. Walaubagaimanapun, sebarang penghadan atas kuasa-kuasa beliau tidak pernah disampaikan kepada plaintif-plaintif.

[2] Perlakuan defendan-defendan membuat pengumuman di dalam akhbar-akhbar berhubung pemberhentian pekerjaan Muhammad Ali dengan jelasnya menyarankan bahawa Muhammad Ali sebelum penamatan perkhidmatan beliau, berkuasa untuk mengendalikan urusan perniagaan bagi pihak kedua-dua defendan.

[Rayuan ditolak dengan kos.]

Case(s) referred to:
Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd & Anor [1964] 2 QB 480 ***(refd)***
Morris v. Kanssen [1946] AC 459 ***(refd)***

Legislation referred to:
Courts of Judicature Act 1964, s. 42(1)

For the appellants - Collin Sequerah (Cik Halimahtunsaadiah with him); M/s Zain & Co
For the respondents - Tunku Alina Alias; M/s Wong Lu Peen & Tunku Alina

[Appeal from High Court, Kuala Lumpur; Civil Suit No: S2-22-347-1996]

Reported by S Dharmendran

JUDGMENT

Haidar Mohd Noor JCA:

We heard this appeal on 8 July 1998 wherein we reserved judgment. Since then, NH Chan, JCA, the chairman of this court, had retired and it therefore falls on the remaining two members of the panel, ie, Abu Mansor, JCA (now FCJ) and I to determine this appeal by virtue of s. 42(1) of the Courts of Judicature Act 1964. We now proceed to give our decision.

The plaintiffs' case can be shortly stated as follows.

The plaintiffs are citizens of the Philippines. The first plaintiff is the husband of the second plaintiff. They established a company called Minor International Company and were licenced by their government to act as an agent to supply Filipino workers to Malaysia. According to the plaintiffs, by way of a letter dated 1 July 1995 the first defendant requested from the plaintiffs a supply of 490 Filipino workers for the defendants for their projects. The defendants also agreed to provide for air tickets from the Philippines to Malaysia for each worker selected by the plaintiffs and agreed to by the defendants.

Pursuant to the said request the plaintiffs proceeded to advertise for workers both in the newspapers and through the radio in the Philippines. On 11 August 1995, one Muhamad Ali of the defendants had flown to the Philippines with Kariya Lohmud (PW2) to commence the recruitment exercise. Muhamad Ali brought with him a power of attorney dated 11 July 1995 together with a job order dated 11 July 1995 which was handed over to the first plaintiff. Both documents had been duly attested by a Commissioner of Oaths and accredited by our Foreign Affairs Ministry (Wisma Putra) and the Philippine Embassy. With the assistance of the personnel from the defendants the plaintiffs were able to recruit 121 workers. The second defendant then made the necessary application with the Malaysian Immigration authorities for the work permits for the said workers.

The second defendant having obtained the approval from the Immigration Authorities forwarded to the plaintiffs the said approval letter together with all other relevant documents to enable the plaintiffs to obtain the relevant medical clearance and exit permits and the visa applications from the Malaysian Embassy in Manila for the said workers. The workers then resigned from their respective employments to prepare themselves for their departure to Malaysia.

Having thus completed all that was required of them the plaintiffs then requested from the defendants for the air tickets for the said workers. However, the tickets were not sent. As a result the plaintiffs contended that they suffered heavy losses. The particulars of their losses are set out in para. 14 of their amended statement of claim. The plaintiffs made various claims against the defendants for damages under various heads.

We observe that the defence of the defendants is essentially centred on the ground that Muhamad Ali acted outside the scope of his employment and without the defendants' knowledge. As regards the issue of whether Muhamad Ali is only employed by the first defendant, we accept the finding of the learned judge at p. 22 of the Appeal Record thus:

> In the circumstances based on the admissions in the pleadings alone I find that Ali was an employee of both the defendants when the power of attorney and the workers order were made and presented to the plaintiffs.

Quite apart from the above finding, the learned judge, in our view, went at length to evaluate the evidence before him and correctly came to a finding of fact that although Muhamad Ali was legally the employee of the first defendant, due to the blurred lines of the boundary between the first and the second defendants, Muhamad Ali was also treated by both defendants interchangeably as one of the second defendant's employees or agents.

In the result the issue for our determination is whether the learned judge was correct in ruling that Muhamad Ali had not acted outside the scope of his employment and held the defendants liable.

On the doctrine of apparent or ostensible authority, this is what Lord Diplock had to say in *Freeman & Lockyer v. Buckhurst Park Properties (Mangal) Ltd & Anor* [1964] 2 QB 480 at 503:

> An 'apparent' or 'ostensible' authority, on the other hand, is a legal relationship between the principal and the contractor created by a representation, made by the principal to the contractor, intended to be and in fact acted upon by the contractor, that the agent has authority to enter on behalf of the principal into a contract of a kind within the scope of the 'apparent' authority, so as to render the principal liable to perform any obligations imposed upon him by such contract. To the relationship so created the agent is a stranger. He need not be (although he generally is) aware of the existence of the representation but he must not purport to make the agreement as principal himself. The representation, when acted upon by the contractor by entering into a contract with the agent, operates as an estoppel, preventing the principal from asserting that he is not bound by the contract. It is irrelevant whether the agent had actual authority to enter into the contract.
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> In ordinary business dealings the contractor at the time of entering into the contract can in the nature of things hardly ever rely on the 'actual' authority of the agent. His information as to the authority must be derived either from the principal or from the agent or from both, for they alone know what the agent's actual authority is. All that the contractor can know is what they tell him, which may or may not be true. In the ultimate analysis he relies either upon the representation of the principal, that is, apparent authority, or upon the representation of the agent, that is, warranty of authority.

As to how a company can make a representation that a person has its authority, Lord Diplock continued at p. 504.

> ... Where the principal is not a natural person, but a fictitious person, namely, a corporation, two further factors arising from the legal characteristics of a corporation have to be borne in mind. The first is that the capacity of a corporation is limited by its constitution, that is, in the case of a company incorporated under the Companies Act, by its memorandum and articles of association, the second is that a corporation cannot do any act, and that includes making a representation, except through its agent.
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> ...

> The second characteristics of a corporation, namely, that unlike a natural person it can only make a representation through an agent, has the consequence that in order to create an estoppel between the corporation and the contractor, the representation as to the authority of the agent which creates his 'apparent' authority must be made by some person or persons who have 'actual' authority from the corporation to make the representation.

And at p. 505 he explains this very lucidly, thus:

> The commonest form of representation by a principal creating an 'apparent' authority of an agent is by conduct, namely, by permitting the agent to act in the management or conduct of the principal's business. Thus, if in the case of a company the board of directors who have 'actual' authority under the memorandum and articles of association to manage the company's business permit the agent to act in the management or conduct of the company's business, they thereby represent to all persons dealing with such agent that he has authority to enter on behalf of the corporation into contracts of a kind which an agent authorized to do acts of the kind which he is in fact permitted to do usually enters into in the ordinary course of such business.

The learned judge came to a finding that the first defendant had clearly made representation to the plaintiffs that Muhamad Ali had the authority to act as the Project Manager. According to the learned judge, DW1 had admitted in cross-examination that he had such authority to a very limited extent. When asked to explain he elaborated that Muhamad Ali had the power to source but not to make the final decision on recruitment of labour. Hence, it is apparent that he has the authority to "source" for labour. However, any limitations on his powers had never been conveyed to third parties, in particular to the plaintiffs; at least there is no such evidence before the learned judge to that effect.

The learned judge next went on to consider the Indoor Management Rule as expounded by the House of Lords in *Morris v. Kanssen* [1946] AC 459. The learned judge went on to say that the defendants ought not to be allowed to rely on internal arrangements or procedures to defeat the plaintiffs' claim, unless the defendants can prove that the plaintiffs had knowledge of such internal arrangements or procedures. The learned judge found that none had been done in the case before him.

We see no reasons to disagree with the learned judge.

We further agree with the learned judge that the conduct of the defendants in putting an announcement in the newspapers as late as 18 February 1996 regarding the cessation of the employment of Muhamad Ali would clearly suggest that Muhamad Ali was, prior to his termination, authorised to transact business dealings on behalf of both defendants.

On the contention of the defendants that Muhamad Ali acted with criminal intent by referring to the police report lodged on 9 January 1996 against him in respect of the recruitment of 264 Indian workers without consent and the disciplinary proceedings taken against him and his remand, the learned judge had given his reasons for rejecting it. We do not propose to reconsider it and we see no reasons to disagree with his finding and conclusion.

We are satisfied that the learned judge made the right finding of facts on the evidence before him and he has not in anyway erred. In the circumstances we affirm his decision that the defendants are liable to the plaintiffs.

In respect of the damages awarded to the plaintiffs by the learned judge, counsel for the defendants did not address us on this issue and neither has there been a cross-appeal by the plaintiffs and in the circumstances it is not necessary for us to consider it.

The appeal is dismissed with costs. The deposit to go to the plaintiffs/ respondents towards their taxed costs.